

09/982,423
03/09/2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of: Darl Dufendach Conf. No.: 6671

Serial No.: 09/982,423 Group No.: 3682

Filed: 10/18/01 Examiner: Johnson, Vicky A.

For: Slider Lever with Knob Locking Feature

RECEIVED

OCT 21 2003

GROUP 3600

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

deposited with the United States Postal Service
with sufficient postage as first class mail, in an envelope
addressed to the Commissioner of Patents, P.O. Box 1450
Alexandria, VA 22313-1450

transmitted by facsimile to the Patent and Trademark Office.
to Examiner _____ at _____

Signature

Joyce Krumpe

Date: 10/10/03

Joyce Krumpe

PETITION FOR WITHDRAWAL OF HOLDING
OF ABANDONMENT UNDER 37 CFR 1.181

Sir:

The undersigned hereby petitions to withdraw the holding of abandonment in this case (issued September 10, 2003) on two separate grounds. First, the undersigned hereby petitions to withdraw holding of abandonment because all of the requirements set forth in 37 C.F.R. §1.8 were met by the undersigned when he filed, by way of facsimile transmission, Paper Number 3 on March 19, 2003. Second, the Patent and Trademark Office should withdraw the Holding of Abandonment because the evidence of record shows that the Patent and Trademark Office in fact received the Amendment under 37 C.F.R. §1.111 (Paper Number 3) which was faxed by the

09/982,423
65899-0129

undersigned on March 19, 2003.

FACTS

On or about Tuesday July 22, 2003, the undersigned received a telephone call from Ms. Vicky Johnson inquiring about the status of this application. After reviewing the file, the undersigned called Ms. Johnson and informed her that on March 19, 2003 an amendment (Paper Number 3) had been filed in response to the office action of December 19, 2002 the amendment was filed using Certificate of Mailing or Transmission procedure under 37 C.F.R. §1.8.

Ms. Johnson asked if we could provide her with a copy of the papers filed on March 19, 2003 and the undersigned did so on July 30, 2003 (see Attachment A). In addition, the undersigned sent Ms. Johnson a COMMUNICATION UNDER 37 C.F.R. § 1.8(b) (see Attachment A) which sets forth, amongst other things, a statement by Ms. Joyce Krumpe (secretary to the undersigned) stating that the relevant eight page response was faxed on March 19, 2003 and, "as evidence in support of this statement, attached hereto is a copy of the sending unit's report confirming transmission of the eight page response on March 19, 2003." Attached to Ms. Krumpe's affidavit was a photocopy of a facsimile confirmation sheet showing that on March 19, 2003 at 7:09PM, an eight page facsimile was sent to Ms. Vicky Johnson which referenced case serial number 09/982,423 (see Attachment A).

On September 12, 2003 the undersigned received a Notice of Abandonment (see Attachment B) relating to this application. The Notice of Abandonment acknowledges that a reply was received on July 30, 2003 but indicates that it did not constitute a proper reply or bona fide attempt at a proper reply to the non-final rejection. The reason cited in the Notice of Abandonment that the reply was defective was that the Certificate of Mailing or Transmission thereon was improper.

The undersigned closely reviewed the Certificate of Mailing or Transmission set forth on the first page of the amendment of March 19, 2003 and could not determine any defect in the Certificate. The undersigned then contacted the Examiner of record (Ms. Vicky Johnson), and she directed the undersigned's inquiry to a Ms. Jackie Waldo. On September 30, 2003, the

09/982,423
65899-0129

undersigned established telephone contact with Ms. Waldo and she explained that the reason the Certificate of Mailing or Transmission is defective is that "it is mandatory for the date shown in the Certificate of Mailing or Transmission to be included in the body of the sentence that starts out 'I hereby certify that this correspondence is...'" Ms. Waldo explained that although we placed the date within the Certificate of Mailing or Transmission box (it appears at the bottom of the Certificate of Mailing or Transmission box), it does not appear in the body of the sentence which begins 'I hereby certify that this correspondence...' and therefore the Certificate of Mailing or Transmission is defective and can't be relied upon to establish a filing date of March 19, 2003 under 37 C.F.R. 1.8.

Argument #1:

Paper Number 3 should be accorded a filing date of March 19, 2003 because all of the requirements under 37 C.F.R. §1.8 are met.

This application has been abandoned by the U.S. Patent and Trademark Office because the Certificate of Mailing or Transmission is improper. More specifically, it is the Office's position that the format of the Certificate of Mailing or Transmission used by the undersigned in Paper Number 3 is not the proper format as mandated by the U.S. Patent and Trademark Office and the M.P.E.P.

37 C.F.R. §1.8 sets forth the requirements for using Certificate of Mailing or Transmission procedure. Specifically 37 C.F.R. §1.8 states, in relevant part, that correspondence "will be considered as being timely filed if: (i) the correspondence is mailed or transmitted prior to expiration of the set period of time... and (ii) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated."

The shortened statutory period set for response was March 19, 2003. The response (Paper Number 3) was faxed on March 19, 2003 (see Attachment C which includes a copy of the sending unit's report). Accordingly this first requirement of 37 C.F.R. §1.8 is clearly met. The

second requirement of 37 C.F.R. §1.8 is set forth in 37 C.F.R. §1.8(a)(1)(ii) states that the correspondence must include a Certificate for each piece of correspondence stating the date of deposit or transmission. No specific format for the Certificate of Mailing or Transmission is mandated by this section. This section simply states that the correspondence must include a certificate for each piece of correspondence stating the date of deposit. A fair and balanced reading of the Certificate of Mailing or Transmission found on Paper Number 3 shows that the Certificate fulfills the requirements of 37 CFR §1.8 by setting forth a date and then referencing that date as “indicated below” upon which the correspondence is being transmitted. The format thereof is clearly within the bounds of the functional requirements of 37 C.F.R. §1.8.

Moreover, when Ms. Jackie Waldo explained to the undersigned, in the September 30, 2003 telephone conference, the reason that the Certificate of Mailing or Transmission in Paper Number 3 was considered to be improper, she stated that the format set forth for the Certificate of Mailing or Transmission in M.P.E.P. § 512 was mandatory. Although M.P.E.P. § 512 does set forth a Certificate of Mailing or Transmission format, it clearly states that it is a “**suggested**” format (see Attachment D midway through the second column) for a Certificate of Mailing or Transmission under 37 C.F.R. §1.8. **Contrary to Ms. Waldo’s assertion, M.P.E.P §512, is in no way mandating the format.**

As evidence that the Patent and Trademark Office does not, in practice, mandate the format of the Certificate of Mailing or Transmission, the undersigned hereby submits as Attachment E a Form PTOL-85 (Issue Fee Transmittal Form), wherein the Certificate of Mailing or Transmission found thereon closely tracks the format used by the undersigned in Paper Number 3. Specifically, the format set forth on Form PTOL-85 refers to “the date indicated below.” and thereafter, there is a date box for the person signing the Certificate of Mailing or Transmission to complete. The date does not appear in the body of the sentence beginning “I hereby certify...”. The format for the Certificate of Mailing or Transmission used on PTOL-85 closely tracks the format of the Certificate used in Paper Number 3.

It is inconsistent for the Patent and Trademark Office to abandon this application because of alleged defects in the Certificate of Mailing or Transmission and then for the Patent and

09/982,423
65899-0129

Trademark Office to, in turn, use and accept a similar "improper" format in its own forms.

In compliance with 37 C.F.R. §1.8(b), the undersigned hereby (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) hereby supplies an additional copy of the previous mailed or transmitted correspondence and certificate (see Attachment F); and (3) hereby includes a statement (see Attachment G) which attests on a personal knowledge basis to the previously timely transmission of the eight page Amendment (Paper Number 3) and includes therewith a copy of the sending unit's report confirming transmission is attached to Ms. Krumpe's statement.

In view of the arguments set forth above and the submissions enclosed herewith, the undersigned petitions withdrawal of the holding of abandonment of this application.

Argument #2:

A receipt date of March 19, 2003 should be accorded to Paper Number 3 because March 19, 2003 is the date upon which the complete transmission was received in the Patent and Trademark Office.

Notwithstanding 37 C.F.R. §1.8, and the argument set forth above, the date accorded to correspondence is the date on which the complete transmission is received in the Patent and Trademark Office. 37 C.F.R. §1.6(d) makes this clear. However, 37 C.F.R. 1.6(d) does not state what type of evidence the Patent and Trademark Office will consider in determining whether or not a complete transmission was received. However, 1.6(f) does discuss what evidence is considered relevant when an applicant seeks to establish a filing date for a facsimile transmission of a CPA application. Although the amendment at issue in this Petition is not a CPA application, 37 C.F.R. §1.6(f) can certainly be looked to guidance on the type of proofs that the Patent and Trademark Office deems credible when seeking to determine whether a date should be accorded to certain faxed documents. Specifically 37 C.F.R. 1.6(f) states that where an applicant that has faxed a CPA application, which the Patent and Trademark Office has no evidence of receiving, the applicant may petition the Commissioner to accord a filing date provided that the party who

09/982,423
65899-0129

transmitted the application (i) informs the Office of the previous transmission...; (ii) supplies an additional copy of the previously transmitted CPA application; and (iii) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous transmission of application under § 1.53(d) and is accompanied by a copy of the sending unit's report confirming transmission of the application under § 1.53(d).

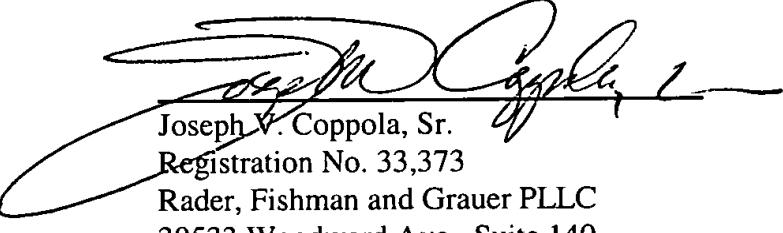
If the above procedure is sufficient for proving a facsimile transmission of a CPA application, then the undersigned can see no logical reason why such procedure would not be sufficient to establish a date of facsimile transmission of the Amendment at issue. Accordingly, in view of the Statement of Ms. Joyce Krumpe included herewith (Attachment G, along with the copy of the sending unit's report confirming transmission), the copy of the previously transmitted amendment of March 19, 2003 (Attachment F), and the timely notice to the Office of the previous transmission of Paper Number 3, the undersigned believes that sufficient evidence has been set forth under 37 C.F.R. §1.6 to establish that Paper Number 3 was received in the U.S. Patent and Trademark Office on March 19, 2003.

In consideration of the statements made herein and the papers submitted herewith, it is respectfully requested that the Holding of Abandonment be withdrawn and that this application be passed on for further prosecution on the merits.

09/982,423
65899-0129

The petition fee (37 C.F.R. §1.17 (h)) may be withdrawn from Deposit Account No. 18-0013. No other fees are believed to be due with the filing of this paper; however, if any other fees are due, they may also be withdrawn from Deposit Account No. 18-0013.

Respectfully submitted,



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